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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

EDUARDO GONZALEZ, ANTHONY
OCAMPO, ENCARNACION
GUTIERREZ, JOHAN MONTOYA,
JUANCARLOS GÓMEZ-MONTEJANO,
JENNIFER LU, AUSTIN CHU, IVY
NGUYEN, ANGELINE WU, ERIC
FIGHT, CARLA GRUBB, DAVID
CULPEPPER, PATRICE DOUGLASS,
and ROBAIR SHERROD, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES,
INC., A&F CALIFORNIA, LLC, and A&F
OHIO, INC.

Defendants.

Case No. 03-2817 SI

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND
DAMAGES, FOR VIOLATIONS OF TITLE
VII OF THE CIVIL RIGHTS ACT OF 1964,
42 U.S.C. § 2000e; 42 U.S.C. § 1981; AND
CALIFORNIA FAIR EMPLOYMENT AND
HOUSING ACT**

DEMAND FOR JURY TRIAL

1 Individual and Representative Plaintiffs Eduardo Gonzalez, Anthony Ocampo,
2 Encarnacion Gutierrez, Johan Montoya, Juancarlos Gómez-Montejano, Jennifer Lu, Austin Chu,
3 Ivy Nguyen, Angeline Wu, Eric Fight, Carla Grubb, and David Culpepper, Patrice Douglass, and
4 Robair Sherrod (collectively “Plaintiffs”) on behalf of themselves and all others similarly
5 situated, allege, upon personal knowledge as to themselves and information and belief as to other
6 matters, as follows:

7 **INTRODUCTORY STATEMENT**

8 1. Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC, and
9 A&F Ohio, Inc. (hereinafter collectively identified as “Abercrombie,” “A&F,” or “the
10 Company”) are a national retail clothing seller that discriminates against minority individuals,
11 including Latinos, Asian Americans, and African Americans (hereinafter, collectively,
12 “minorities”) on the basis of race, color, and/or national origin, with respect to hiring, firing, job
13 assignment, compensation and other terms and conditions of employment by enforcing a
14 nationwide corporate policy of preferring white employees for sales positions, desirable job
15 assignments, and favorable work schedules in its stores throughout the United States.

16 2. Abercrombie recruits, hires, and maintains a disproportionately white sales
17 force (called Brand Representatives) who act as salespeople and recruiters of other potential
18 Brand Representatives.

19 3. Abercrombie systematically refuses to hire qualified minority applicants as
20 Brand Representatives to work on the sales floor and discourages applications from minority
21 applicants. To the extent that it hires minorities, it channels them to stock room and overnight
22 shift positions and away from visible sales positions, keeping them out of the public eye. In
23 addition, Abercrombie systematically fires qualified minority Brand Representatives in
24 furtherance of its discriminatory policies or practices.

25 4. Abercrombie implements its discriminatory employment policies and
26 practices in part through a detailed and rigorous “Appearance Policy,” which requires that all
27 Brand Representatives must exhibit the “A&F Look.” The “A&F Look” is a virtually all-white
28 image that Abercrombie uses not only to market its clothing, but also to implement its

1 discriminatory employment policies or practices.

2 5. When people who do not fit the “A&F Look” inquire about employment,
3 managers sometimes tell them that the store is not hiring, or may provide them with applications
4 even though they have no intention of considering them for employment. If applicants who do
5 not fit the “A&F Look” submit applications, managers and/or Brand Representatives acting at
6 their direction sometimes throw them away without reviewing them.

7 6. Abercrombie publishes and distributes to its employees a “Look Book” that
8 explains the importance of the Appearance Policy and the “A&F Look,” and that closely regulates
9 the Brand Representatives’ appearance. The Company requires its managers to hire and continue
10 to employ only Brand Representatives who fit within the narrow confines of the “Look Book,”
11 resulting in a disproportionately white Brand Representative workforce.

12 7. Abercrombie also uses visual media to reinforce to managers responsible
13 for recruitment, hiring, assignment, compensation, termination, and other terms and conditions of
14 employment of Brand Representatives the importance of adhering to the virtually all-white A&F
15 image in employment decisions. Each store prominently posts large photographs of models –
16 virtually all of whom are white. In addition, the Company publishes and sells A&F Quarterly, a
17 magazine/catalog featuring almost exclusively white models. Some stores also display A&F TV,
18 a television program played on a loop featuring Brand Representatives who fit the “A&F Look.”
19 Again, almost every Brand Representative shown is white. Abercrombie corporate
20 representatives and managers use these displays and publications to portray and promote the
21 “A&F Look” to employees, customers, applicants, and potential applicants, to discourage and
22 deter minority applicants, and to justify terminating minority employees.

23 8. The Company rigorously maintains the “A&F Look” by careful scrutiny
24 and monitoring of its stores by regional and district managers and corporate representatives.
25 These managers and corporate representatives visit stores frequently to ensure, among other
26 things, that the store is properly implementing the Company’s discriminatory employment
27 policies and practices. These visits are referred to as “blitzes.” When managers or corporate
28 representatives discover that minority Brand Representatives have been hired, they have directed

1 that these Brand Representatives be fired, moved to the stock room or overnight shift, or have
2 their hours “zeroed out,” which is the equivalent of termination.

3 9. The Company also scrutinizes and enforces compliance with the “A&F
4 Look” by requiring all stores to submit a picture of roughly 10 of their Brand Representatives
5 who fit the “Look” to headquarters each quarter. The corporate officials then select roughly 15
6 stores’ pictures as exemplary models that perpetuate the Company’s discriminatory employment
7 policies and practices. They then disseminate these pictures to the over 600 A&F stores. The
8 Brand Representatives in the pictures are almost invariably white. This practice and policy, like
9 the others described above, constitutes an official directive to give preference to white Brand
10 Representatives and applicants, and to discriminate against minority Brand Representatives and
11 applicants.

12 10. The A&F image is not limited to appearance; the Company accomplishes
13 its discriminatory employment policies or practices by defining its desired “classic” and “cool”
14 workforce as exclusively white. It seeks to hire Brand Representatives who convey a certain
15 image. This A&F image is decidedly non-minority. In order to perpetuate the A&F image,
16 Abercrombie identifies specific colleges from which each store should recruit its employees, even
17 though the Brand Representative position does not require any of the skills or abilities acquired in
18 college, much less in any specific college. Abercrombie also encourages the recruitment and
19 hiring of members of specified overwhelmingly white fraternities and sororities, and of students
20 who participate in certain overwhelmingly white intercollegiate sports. However, the Company
21 does not encourage recruitment from fraternities, sororities, or sports teams with significant
22 minority populations. To further reinforce to store managers the importance of hiring white
23 students who fit the Abercrombie image, the Company requires weekly reports on the number of
24 Brand Representatives who attend targeted colleges and who fit the emphasis on
25 fraternity/sorority membership and athletic team involvement.

26 11. This class action is accordingly brought by minority Brand Representatives
27 and applicants for Brand Representative positions on behalf of themselves individually and all
28 minority applicants and employees against whom Abercrombie has discriminated on the basis of

1 race, color, and/or national origin. Abercrombie has maintained and continues to maintain a
2 pervasive policy or practice of discrimination based on race, color, and/or national origin in
3 denying employment, desirable job assignments, job transfers, allocation of weekly hours,
4 compensation, and other terms and conditions of employment to minorities in Abercrombie stores
5 throughout the United States.

6 12. This action seeks an end to these discriminatory policies or practices, an
7 award of backpay and front pay, as well as compensatory damages, punitive damages, and
8 injunctive relief, including rightful place relief for all class members.

9 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

10 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
11 and 1343.

12 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Members
13 of the Plaintiff class reside in California and throughout the United States. Defendant
14 Abercrombie is a Delaware corporation licensed to do business in California. It has retail stores
15 throughout California and this District. Many of the acts complained of occurred in this State and
16 this District and gave rise to the claims alleged.

17 15. Intradistrict assignment is proper in the San Francisco/Oakland Division
18 because (1) some of the events and omissions that give rise to the claims of Plaintiff Anthony
19 Ocampo occurred in San Mateo County, (2) some of the events and omissions that give rise to the
20 claims of Plaintiff David Culpepper occurred in San Francisco County, and (3) some of the events
21 and omissions that give rise to the claims of Plaintiff Patrice Douglass occurred in Alameda
22 County.

23 **PARTIES**

24 16. Plaintiff Eduardo Gonzalez is a minority resident of Palo Alto, California,
25 where he is a student at Stanford University. He was denied a position as a Brand Representative
26 at the Abercrombie store in the Valley Fair Mall in Santa Clara, California in August 2002, on
27 account of his race, color, and/or national origin.

28 17. Plaintiff Anthony Ocampo is a minority resident of Palo Alto, California,

1 where he is a student at Stanford University. He was denied a position as a Brand Representative
2 at the Abercrombie store in the Hillsdale Shopping Center in San Mateo, California, in or around
3 January 2000 on account of his race, color, and/or national origin. He was also denied a position
4 as a Brand Representative at the Abercrombie Store in the Glendale Galleria in Glendale,
5 California in June 2000 on account of his race, color, and/or national origin.

6 18. Plaintiff Encarnacion Gutierrez is a minority resident of South San
7 Francisco, California. He was denied a position as a Brand Representative at the Abercrombie
8 store in the Third Street Promenade in Santa Monica, California in June or July 2001, on account
9 of his race, color, and/or national origin.

10 19. Plaintiff Johan Montoya is a minority resident of Goleta, California, where
11 he is a student at the University of California at Santa Barbara. He was denied a position as a
12 Brand Representative at the Abercrombie store in the Topanga Mall in Canoga Park, California in
13 August or September 2002 on account of his race, color, and/or national origin.

14 20. Plaintiff Juancarlos Gómez-Montejano is a minority resident of Los
15 Angeles, California. He was employed as a Brand Representative at the Abercrombie store at the
16 Third Street Promenade in Santa Monica, California, from November 1998 to April 1999, when
17 he was terminated on account of his race, color, and/or national origin.

18 21. Plaintiff Jennifer Lu is a minority resident of Irvine, California, where she
19 is a student at the University of California at Irvine. She was employed as a Brand
20 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,
21 from September 2000 to February 2003, when she was terminated on account of her race, color,
22 and/or national origin.

23 22. Plaintiff Austin Chu is a minority resident of Irvine, California, where he is
24 a student at the University of California at Irvine. He was employed as a Brand Representative in
25 the Abercrombie store in the Crystal Court Mall in Costa Mesa, California from June 2001 to
26 March 2003, when he was constructively discharged on account of his race, color, and/or national
27 origin.

28 23. Plaintiff Ivy Nguyen is a minority resident of Anaheim, California, where

1 she is a student at the University of California at Irvine. She was employed as a Brand
2 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,
3 from June 2002 to February 2003, when she was terminated on account of her race, color, and/or
4 national origin.

5 24. Plaintiff Angeline Wu is a minority resident of Irvine, California where she
6 is a student at the University of California at Irvine. She was employed as a Brand
7 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,
8 from August 2002 to February 2003, when she was terminated on account of her race, color,
9 and/or national origin.

10 25. Plaintiff Eric Fight is a minority resident of Venice, California. He was
11 employed as a Brand Representative in the Abercrombie store in the Third Street Promenade in
12 Santa Monica, California, from roughly May 2003 to June 2003, but was channeled to a stock
13 room role (a non-sales position) due to his race or color. He was constructively discharged in or
14 around June 2003 when he learned that he was not allowed to work on the sales floor due to his
15 race or color and that he had been misled by the manager with whom he had interviewed into
16 believing that there were no sales floor Brand Representative positions available.

17 26. Plaintiff Carla Grubb is a minority resident of Bakersfield, California,
18 where she is a student at California State University at Bakersfield. She began working as a
19 Brand Representative in the Abercrombie store in the Bakersfield Valley Plaza Mall in
20 Bakersfield, California in November 2002. In or after January 2003, she was constructively
21 discharged on account of her race or color.

22 27. Plaintiff David Culpepper is a minority resident of Berkeley, California,
23 where he is a graduate student at the University of California at Berkeley. He was denied
24 positions as a Brand Representative at the Abercrombie store in the SF Shopping Center in San
25 Francisco, California in June 2003, and at the SF Stonestown Galleria in San Francisco,
26 California in March 2003 on account of his race or color.

27 28. Plaintiff Patrice Douglass is a minority resident of El Sobrante, California,
28 where she is a student at the University of California, Santa Cruz. She was denied a position as a

1 Brand Representative at the Abercrombie store in the Bay Street shopping area in Emeryville,
2 California in or about May 2003 on account of her race, color, and/or national origin.

3 29. Plaintiff Robair Sherrod is a minority resident of Carson, California, where
4 he is a student at California State University at Dominguez Hills. He was denied a position as a
5 Brand Representative at the Abercrombie store at the South Bay Galleria in Redondo Beach,
6 California in or about December 2002.

7 30. Defendant Abercrombie & Fitch Stores, Inc. is an Ohio corporation and a
8 wholly owned subsidiary of Abercrombie. Based on the representations of defendants, from July
9 1996 to August 2000, during which time it was a Delaware corporation, Abercrombie & Fitch
10 Stores, Inc. operated all California Abercrombie stores; from August 2000, when it became an
11 Ohio corporation, to May 2002, it operated all Abercrombie stores; and since May 2002, it has
12 operated all Abercrombie stores outside of California and Ohio.

13 31. Defendant A&F California, LLC is an Ohio limited liability company and a
14 wholly owned subsidiary of Abercrombie. Based on the representations of defendants, since May
15 2002, it has operated all Abercrombie stores in California.

16 32. Defendant A&F Ohio, Inc. is an Ohio corporation and a wholly owned
17 subsidiary of Abercrombie. Based on the representations of defendants, since May 2002, it has
18 operated all Abercrombie stores in Ohio.

19 33. Defendants are a national retail clothing seller primarily marketing to
20 teenagers and young adults. According to the Company, it took in \$1.6 billion in revenue during
21 fiscal year 2002, a 17% increase over the previous year. As of the end of the first quarter of 2003
22 (ended May 3, 2003), the Company operated 602 stores.

23 34. Abercrombie operates stores (and/or departments within Abercrombie &
24 Fitch stores) under three different names: "Abercrombie & Fitch" (the "Adult" store),
25 "Hollister," and "A&F Kids." Although each type of store offers different product lines, they all
26 follow the same human resources policies and practices, participate in the same discrimination,
27 and are run by the same management. Applicants to and employees of each type of store are
28 included in the proposed Class.

CLASS ACTION ALLEGATIONS

35. Plaintiffs bring this Class Action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of a class of all past, present, and future minority Abercrombie Brand Representatives and applicants for Brand Representative positions with Abercrombie who have been, continue to be, or in the future may be discouraged from applying or denied employment, desirable job assignments, job transfers, desirable hours, compensation, and/or other terms and conditions of employment on the basis of their race, color, and/or national origin, and/or who have been terminated on account of the policies or practices complained of herein.

36. Plaintiffs are members of the class they seek to represent.

37. The members of the class identified herein are so numerous that joinder of all members is impracticable. The number of class members is currently indeterminate, but is certainly larger than can be addressed through joinder. By the end of FY 2003 (ended February 1, 2003), Abercrombie had approximately 22,000 employees. In addition, temporary employees are hired during peak periods, such as the holiday season. Each of Abercrombie's 600-odd stores employs very few minority Brand Representatives but each store, on average, annually receives numerous applications from qualified minorities who are potential Brand Representatives; as a result of Abercrombie's systematic discriminatory hiring practices, an unknown number of minority applicants have also been deterred from applying. Thus, although the precise number of qualified minority applicants who are not hired and/or who are fired or otherwise discriminated against is currently unknown, it is far greater than can be feasibly addressed through joinder.

38. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether Abercrombie's policies or practices discriminate against minority employees and applicants; (2) whether Abercrombie's use of the "A&F Look" and image as an employment policy or practice discriminates against minority applicants and employees; (3) whether Abercrombie's policies and practices violate Title VII; (4) whether Abercrombie's policies or practices violate 42 U.S.C. § 1981; and (4) whether compensatory and punitive damages, injunctive relief, and other equitable remedies for the class are warranted.

1 39. The representative Plaintiffs' claims are typical of the claims of the class.

2 40. The representative Plaintiffs will fairly and adequately represent and
3 protect the interests of the members of the class. Plaintiffs have retained counsel competent and
4 experienced in complex class actions, employment discrimination litigation, and the intersection
5 thereof.

6 41. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
7 because Abercrombie has acted and/or refused to act on grounds generally applicable to the class,
8 making appropriate declaratory and injunctive relief with respect to Plaintiffs and the class as a
9 whole. The class members are entitled to injunctive relief to end Abercrombie's common,
10 uniform, and unfair racially discriminatory personnel policies and practices.

11 42. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
12 because common questions of fact and law predominate over any questions affecting only
13 individual members of the class, and because a class action is superior to other available methods
14 for the fair and efficient adjudication of this litigation. The class members have been damaged
15 and are entitled to recovery as a result of Abercrombie's common, uniform, and unfair racially
16 discriminatory personnel policies and practices. Abercrombie has computerized payroll and
17 personnel data that will make calculation of damages for specific class members relatively
18 simple. The propriety and amount of punitive damages are issues common to the class.

19 **CLAIMS OF REPRESENTATIVE PLAINTIFFS**

20 **Eduardo Gonzalez**

21 43. Plaintiff Eduardo Gonzalez, a Latino male, is a student at Stanford
22 University. He applied for a position as a Brand Representative at the Abercrombie store in the
23 Valley Fair Mall in Santa Clara, California on August 7, 2002. An Abercrombie manager
24 suggested that he apply to work in the stock room or on the overnight crew in a non-sales
25 position. Nevertheless, Mr. Gonzalez returned to the store for a group interview for the Brand
26 Representative position on August 27, 2002. Mr. Gonzalez was not hired as a Brand
27 Representative. Mr. Gonzalez was qualified for the job. Indeed, immediately following his
28 Abercrombie interview, he crossed the hall within the same mall to apply for a job at Banana

1 Republic, a similar retail clothing store that competes directly with Abercrombie for customers
2 and employees. An employee of Banana Republic asked Mr. Gonzalez if he was interested in
3 applying to work as a manager. He applied to work as a sales associate, and worked for Banana
4 Republic in such a capacity through the academic year. Despite knowing of his qualifications,
5 Abercrombie refused to hire Mr. Gonzalez based on his race, color, and/or national origin.

6 44. Abercrombie has discriminated against Mr. Gonzalez on the basis of his
7 race, color and/or national origin by denying him employment because he is not white.

8 45. On or about April 25, 2003, Mr. Gonzalez filed a charge of discrimination
9 with the Equal Employment Opportunity Commission ("EEOC"). Mr. Gonzalez received a copy
10 of his Notice of Right to Sue from the California Department of Fair Employment and Housing
11 ("DFEH"), dated April 29, 2003. Attached to this Complaint as Exhibit A and incorporated by
12 reference are copies of that charge and that notice. On or about December 30, 2003, the EEOC
13 issued Mr. Gonzalez a notice of right to sue. Attached to this Complaint as Exhibit P and
14 incorporated by reference is a copy of that notice.

15 **Anthony Ocampo**

16 46. Plaintiff Anthony Ocampo, a Filipino American male, is a student at
17 Stanford University. From December 1999 to January 2000, he worked part time as a Brand
18 Representative at the Abercrombie store in the Glendale Galleria in Glendale, California near his
19 family's home.

20 47. It is common practice at Abercrombie for college students to work at the
21 Abercrombie near their family home during vacations, and then to transfer to a store near their
22 college during the school year (or vice versa). Therefore, when Mr. Ocampo returned to
23 Stanford, he attempted to apply for a position as Brand Representative at the Abercrombie store
24 in the Hillsdale Shopping Center in San Mateo, California. Mr. Ocampo was told that he would
25 be contacted regarding a stock person position, but not for the position of Brand Representative.
26 Mr. Ocampo never was contacted for any position with Abercrombie, and when he contacted the
27 manager there, he was told that he would have to reapply.

28 48. Later that year, when he returned home for summer vacation in June of

1 2000, Mr. Ocampo applied to work once again at the Glendale Galleria Abercrombie. He was
2 told that there were “too many Filipinos” working at that location. He was not even given the
3 opportunity to submit a written application. Mr. Ocampo was qualified for the job of Brand
4 Representative, in part based on his prior experience doing that exact job at the Abercrombie
5 store in the Glendale Galleria. Abercrombie refused to hire Mr. Ocampo, despite knowing of his
6 qualifications, based on his race, color, and/or national origin.

7 49. Abercrombie has discriminated against Mr. Ocampo on the basis of his
8 race, color and/or national origin (a) by denying him employment because he is not white; and
9 (b) by refusing to transfer him from one store to another on the same terms as white Brand
10 Representatives.

11 **Encarnacion Gutierrez**

12 50. Plaintiff Encarnacion Gutierrez, a Latino male, graduated from the
13 University of California at Los Angeles in 2002 with a B.S. in Civil Engineering and from the
14 University of California at Berkeley in 2003 with an M.S. in Structural Engineering. He applied
15 to work as a Brand Representative at the Abercrombie store in the Third Street Promenade in
16 Santa Monica, California in June or July 2001, and later returned for a group interview.
17 Mr. Gutierrez was qualified for the job. Abercrombie refused to hire Mr. Gutierrez, despite
18 knowing of his qualifications, based on his race, color, and/or national origin.

19 51. During his initial visit to the store, Mr. Gutierrez observed that the staff
20 was virtually exclusively white. The manager who conducted the group interview was white. He
21 asked no questions regarding prior work experience or relevant skills. During the interview, the
22 manager asked a Filipino-American applicant whether he spoke English even though the
23 applicant had already answered several questions and demonstrated his fluency in English.
24 Mr. Gutierrez saw the manager write “phil” next to the applicant’s name.

25 52. Abercrombie has discriminated against Mr. Gutierrez on the basis of his
26 race, color, and/or national origin by denying him employment because he is not white.

27 53. On or about May 21, 2002, Mr. Gutierrez filed a charge of discrimination
28 with the EEOC. Attached to this Complaint as Exhibit B, and incorporated by reference, is a

1 copy of that charge. On or about December 30, 2003, the EEOC issued Mr. Gutierrez a notice of
2 right to sue. Attached to this Complaint as Exhibit Q and incorporated by reference is a copy of
3 that notice.

4 **Johan Montoya**

5 54. Plaintiff Johan Montoya, a Latino male, is a student at the University of
6 California at Santa Barbara. He applied for a position as a Brand Representative at the
7 Abercrombie store in the Topanga Mall in Canoga Park, California in August or September 2002,
8 participated in a group interview for the job and submitted a paper application. He was qualified
9 for the job, in part based on his prior work experience as a sales associate at another retail
10 establishment in the same mall. Abercrombie refused to hire Mr. Montoya despite knowing of his
11 qualifications, based on his race, color, and/or national origin.

12 55. Abercrombie has discriminated against Mr. Montoya on the basis of his
13 race, color, and/or national origin by denying him employment because he is not white.

14 56. On or about April 22, 2003, Mr. Montoya filed a charge of discrimination
15 with the EEOC. Mr. Montoya received a copy of his Notice of Right to Sue from the DFEH,
16 dated April 29, 2003. Attached to this Complaint as Exhibit C and incorporated by reference, are
17 copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Mr.
18 Montoya a notice of right to sue. Attached to this Complaint as Exhibit R and incorporated by
19 reference is a copy of that notice.

20 **Juancarlos Gómez-Montejano**

21 57. Plaintiff Juancarlos Gómez-Montejano, a Latino male, worked as a Brand
22 Representative at the Abercrombie store at the Third Street Promenade in Santa Monica,
23 California from November 22, 1998 until August 1999, while he was a student at the University
24 of California at Los Angeles. During that time, he regularly worked roughly 10-15 hours per
25 week. After noticing that his work hours had been reduced, Mr. Gómez-Montejano requested his
26 personnel file. In August 1999 he learned that Company records showed that, unbeknownst to
27 him, he had been fired from his position. He had never been previously informed of this
28 termination, nor was he advised of any reasons for the termination.

1 58. In or around February or March 1999, Abercrombie representatives from
2 Ohio corporate headquarters visited the store on a “blitz,” and observed that there were
3 photographs of each of the Brand Representatives posted in an employee area in the back. A
4 corporate official pointed to the pictures of four or five minority Brand Representatives, including
5 Mr. Gómez-Montejano, and directed store management to “zero them out.” This expression is
6 used within the Company to signify that the manager assigning work shifts should begin
7 assigning that person zero hours each week. In the following weeks, Mr. Gómez-Montejano
8 continued to inform his manager that he was available to work many hours a week, just as he had
9 throughout his tenure at Abercrombie; however, each week he received a schedule giving him
10 zero hours. Eventually, he realized that this “zeroed out” schedule might be permanent.
11 Therefore, he requested his personnel file in July 1999, and, after his second request, received a
12 copy of a company document stating that he had been terminated.

13 59. Abercrombie has discriminated against Mr. Gómez-Montejano on the basis
14 of his race, color, and/or national origin by (a) terminating his employment because he is not
15 white; and (b) refusing to give him desirable hours/assignments on the same terms as white Brand
16 Representatives.

17 60. On or about December 21, 1999, Mr. Gómez-Montejano filed a charge of
18 discrimination with the EEOC. Attached to this Complaint as Exhibit D, and incorporated by
19 reference, is a copy of that charge. After investigating, the EEOC issued a Letter of
20 Determination, finding that Abercrombie had discriminated against Mr. Gómez-Montejano and
21 against “Latinos and Blacks, as a class.” Attached to this Complaint as Exhibit E, and
22 incorporated by reference, is a copy of that letter. On or about December 21, 1999, the DFEH
23 issued to Mr. Gómez-Montejano a Notice of Right to Sue. Attached to this Complaint as
24 Exhibit F, and incorporated by reference, is a copy of that notice. On or about December 30,
25 2003, the EEOC issued Mr. Gómez-Montejano a notice of right to sue. Attached to this
26 Complaint as Exhibit S and incorporated by reference is a copy of that notice.

27 **Jennifer Lu**

28 61. Plaintiff Jennifer Lu is an Asian American female and a student at the

1 University of California at Irvine. She worked as a Brand Representative at the Abercrombie
2 store in the Crystal Court Mall in Costa Mesa, California from September 2000 to February 2003.
3 She was entrusted with responsibilities that only the most trustworthy and more senior staff were
4 given.

5 62. In or around January 2003, representatives from corporate and/or regional
6 headquarters visited the Crystal Court Mall store on an inspection tour, or “blitz.” These
7 headquarters/regional representatives reiterated to the Store Manager and other managers the
8 importance of having a predominantly white Brand Representative workforce, with fewer
9 minorities. Specifically, corporate employees communicated this directive by pointing to a
10 picture of a white male model hanging in the store, and making a statement to the effect of “This
11 is the ‘A&F Look’ – you need to make your store look more like this.” Soon after this “blitz,” on
12 or about February 8, 2003, roughly five Asian American Brand Representatives, including
13 Plaintiffs Jennifer Lu, Austin Chu, Ivy Nguyen, and Angeline Wu were terminated and/or
14 constructively discharged, and one African American Brand Representative was transferred to a
15 behind-the-scenes stockroom position at another Abercrombie store. This action was not
16 premised on any legitimate business consideration, such as a lessened need for Brand
17 Representatives or poor work performance. The store hired several white Brand Representatives
18 within two weeks of firing Ms. Lu.

19 63. On February 8, 2003, Ms. Lu learned that she had been fired. She
20 informed the Store Manager that she was willing to be flexible with shift assignments, and that if
21 the staffing needs picked up in the summer months or other peak shopping seasons, she would
22 like to be considered. Mr. Richter told her that she was not needed at that time nor would she be
23 needed in the future.

24 64. Abercrombie has discriminated against Ms. Lu on the basis of her race,
25 color, and/or national origin by (a) terminating her employment because she is not white; and
26 (b) assigning her fewer hours than similarly-situated white Brand Representatives.

27 65. On or about April 22, 2003, Ms. Lu filed a charge of discrimination with
28 the EEOC. Ms. Lu received a copy of her Notice of Right to Sue from the DFEH, dated April 29,

1 2003. Attached to this Complaint as Exhibit G and incorporated by reference, are copies of that
2 charge and that notice. On or about December 30, 2003, the EEOC issued Ms. Lu a notice of
3 right to sue. Attached to this Complaint as Exhibit T and incorporated by reference is a copy of
4 that notice.

5 **Austin Chu**

6 66. Plaintiff Austin Chu is an Asian American male and a student at the
7 University of California at Irvine. He worked as a Brand Representative at the Abercrombie store
8 in the Crystal Court Mall in Costa Mesa, California from June 2001 to March 2003, when he was
9 constructively discharged.

10 67. Immediately after the January corporate “blitz” visit described herein in the
11 preceding paragraphs, Mr. Chu’s hours were reduced from the usual 10-15 hours per week he had
12 worked during his year and a half tenure to roughly zero hours per week. This “zeroing out”
13 began on or about February 8, 2003 and lasted until approximately March 26, 2003, during which
14 six-week period Mr. Chu was assigned only one four-hour shift (in contrast to his usual 60-90
15 hours for such a six-week period), despite notifying his managers each week of his availability
16 and interest in working the usual 10-15 hours per week. Mr. Chu attempted to gain more hours
17 by offering to fill in for those who were unavailable, and he was denied the opportunity to work
18 more hours. Because he was not assigned any hours to work, Mr. Chu tendered his resignation on
19 March 26, 2003. Mr. Chu was known as one of the most effective Brand Representatives in the
20 store due to his gregarious nature.

21 68. Abercrombie has discriminated against Mr. Chu on the basis of his race,
22 color, and/or national origin by (a) constructively terminating his employment because he is not
23 white; and (b) assigning him fewer hours than similarly-situated white Brand Representatives.

24 69. On or about April 22, 2003, Mr. Chu filed a charge of discrimination with
25 the EEOC. Mr. Chu received a copy of his Notice of Right to Sue from the DFEH, dated
26 April 29, 2003. Attached to this Complaint as Exhibit H and incorporated by reference, are
27 copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Mr. Chu
28 a notice of right to sue. Attached to this Complaint as Exhibit U and incorporated by reference is

1 a copy of that notice.

2 **Ivy Nguyen**

3 70. Plaintiff Ivy Nguyen is an Asian American female and a student at the
4 University of California at Irvine. She worked as a Brand Representative in the Abercrombie
5 store in the Crystal Court Mall in Costa Mesa, California from approximately June 2002 until she
6 was fired sometime during February 2003, shortly after the corporate “blitz” described herein in
7 the preceding paragraphs.

8 71. Abercrombie has discriminated against Ms. Nguyen on the basis of her
9 race, color, and/or national origin by (a) terminating her employment because she is not white;
10 and (b) assigning her fewer hours than similarly-situated white Brand Representatives.

11 72. On or about June 16, 2003, Ms. Nguyen filed a charge of discrimination
12 with the EEOC. Attached to this Complaint as Exhibit I and incorporated by reference, is a copy
13 of that charge. On or about December 30, 2003, the EEOC issued Ms. Nguyen a notice of right to
14 sue. Attached to this Complaint as Exhibit V and incorporated by reference is a copy of that
15 notice.

16 **Angeline Wu**

17 73. Plaintiff Angeline Wu is an Asian American female and a student at the
18 University of California at Irvine. She worked as a Brand Representative at the Abercrombie
19 store in the Crystal Court Mall in Costa Mesa, California from August 2002 to February 2003.

20 74. Ms. Wu worked approximately 5-10 hours a week, at least 2-3 shifts per
21 week. Shortly after the corporate “blitz” described herein in the preceding paragraphs, Ms. Wu's
22 hours were reduced and eventually “zeroed out.” Ms. Wu was then terminated in February 2003.

23 75. Abercrombie has discriminated against Ms. Wu on the basis of her race,
24 color, and/or national origin by (a) terminating her employment because she is not white; and
25 (b) assigning her fewer hours than similarly-situated white Brand Representatives.

26 76. On or about April 17, 2003, Ms. Wu filed a charge of discrimination with
27 the EEOC. Ms. Wu received a copy of her Notice of Right to Sue from the DFEH, dated
28 April 22, 2003. Attached to this Complaint as Exhibit J and incorporated by reference, are copies

1 of that charge and that notice. On or about December 30, 2003, the EEOC issued Ms. Wu a
2 notice of right to sue. Attached to this Complaint as Exhibit W and incorporated by reference is a
3 copy of that notice.

4 **Eric Fight**

5 77. Plaintiff Eric Fight is an African American male residing in Venice,
6 California. He worked as a Brand Representative in the stock room only (a non-sales position) at
7 the Abercrombie store in the Third Street Promenade in Santa Monica, California, from roughly
8 May 2003 to June 2003. He was constructively discharged in or around June 2003 when he
9 learned that he was not allowed to work on the sales floor due to his race or color and that he had
10 been misled by the manager with whom he had interviewed into believing that there were no sales
11 floor Brand Representative positions available.

12 78. In May 2003, Mr. Fight applied for a position as a Brand Representative at
13 the Abercrombie store in the Third Street Promenade in Santa Monica, California and participated
14 in a group interview for the job. Mr. Fight informed the manager conducting the interview that he
15 would rather work as a floor Brand Representative because he had substantial experience in sales
16 and did not have any experience working in a stockroom. The manager told Mr. Fight that he
17 would call him with a hiring decision within a week. Mr. Fight was qualified for the floor Brand
18 Representative job because of his prior work experience as a sales representative for comparable
19 retail clothing stores, including the Gap, Urban Outfitters, and Miller's Outpost. Abercrombie
20 refused to hire Mr. Fight as a Brand Representative despite knowing of his qualifications for the
21 position, based on his race or color.

22 79. A week later, not having heard from the store, Mr. Fight called the store to
23 inquire about the status of his application. The same manager told Mr. Fight that the store was
24 not hiring floor Brand Representatives. Roughly ten days later, the store's stock manager called
25 Mr. Fight and offered him a position in the stock room (a non-sales position). Mr. Fight accepted
26 the position and began working at the store in June 2003, expecting that the store would soon be
27 hiring floor Brand Representatives again and that he could reapply for such a position then. Upon
28 beginning work at the Third Street Promenade store, Mr. Fight observed that the floor Brand

1 Representative staff was virtually exclusively white.

2 80. In June 2003, on Mr. Fight's second day of work at Abercrombie, he met a
3 white floor Brand Representative who had just begun working at the store. Mr. Fight learned that
4 this new Brand Representative had recently been hired, and thus that the manager with whom he
5 had interviewed had deceived him about the availability of floor Brand Representative positions.
6 Mr. Fight concluded that the manager and the store would not consider him for floor Brand
7 Representative positions at that time or in the future due to his race or color. Mr. Fight thus
8 realized that he had been constructively discharged.

9 81. Approximately a week after his discharge, Mr. Fight was hired as a sales
10 associate for the Levi's Store at the Third Street Promenade, a similar retail clothing store that
11 competes with Abercrombie for customers and employees.

12 82. Abercrombie has discriminated against Mr. Fight on the basis of his race,
13 color, and/or national origin by denying him employment as a Brand Representative and
14 channeling him to a stock room position because he is not white.

15 83. On or about August 18, 2003, Mr. Fight filed a charge of discrimination
16 with the EEOC. Attached to this Complaint as Exhibit K, and incorporated by reference, is a
17 copy of that charge. On or about December 30, 2003, the EEOC issued Mr. Fight a notice of
18 right to sue. Attached to this Complaint as Exhibit X and incorporated by reference is a copy of
19 that notice.

20 **Carla Grubb**

21 84. Plaintiff Carla Grubb is an African American female and a student at
22 California State University at Bakersfield. She worked as a Brand Representative at the
23 Abercrombie store in the Bakersfield Valley Plaza Mall in Bakersfield, California from
24 November 2002 to January 2003, when she was constructively discharged.

25 85. From November 2002 to December 2002, Ms. Grubb worked as Brand
26 Representative. Each week she requested daytime shifts. However, she was usually assigned to
27 work night shifts, often starting approximately one hour before closing and continuing into the
28 late night. When Ms. Grubb began working for Abercrombie, she observed that she was the only

1 African American employee at the store; besides one Latino male Brand Representative, all the
2 other employees were white. She also noticed that white Brand Representatives were receiving
3 daytime hours and floor time. Although she was officially a floor Brand Representative, Ms.
4 Grubb spent the vast majority of her work time dusting and cleaning windows.

5 86. In approximately late December 2002, Ms. Grubb notified a manager that
6 she would not be available for shifts for the next few weeks, a practice that she had observed to
7 be unremarkable among Brand Representatives in the store. The manager granted her request and
8 stated that it would be “no problem.” Upon returning to work roughly two weeks later, in January
9 2003, Ms. Grubb's hours had been reduced from the normal 15-20 hours per week to almost
10 nothing. She was assigned one 4-hour shift during the month of January. From the seven-month
11 period from the end of January to the present (August 2003), Ms. Grubb has been assigned no
12 shifts, despite notifying her managers each week of her interest in working up to 30 hours a week,
13 and indicating availability from roughly 8 am to 10 pm each day as well as requesting
14 opportunities to sign up for overnight shifts. Ms. Grubb has since learned that there was a
15 corporate “blitz” of the store in early January 2003, which the store managers knew about in
16 advance. The blitz involved a visit by Abercrombie corporate representatives, who took pictures
17 of the Brand Representatives to gauge the store’s compliance with the “A&F Look.”

18 87. In or around May 2003, Ms. Grubb asked her managers for an explanation
19 as to why she was not being assigned shifts. She was informed that she could not return to work
20 because the store was full of employees, although the store still considered her an Abercrombie
21 employee. At the time Ms. Grubb was aware of at least two white Brand Representatives at the
22 store who were assigned shifts of up to 40 hours a week, while Ms. Grubb, despite her continued
23 requests, was assigned no hours.

24 88. Abercrombie has discriminated against Ms. Grubb on the basis of her race,
25 color, and/or national origin by (a) constructively terminating her employment because she is not
26 white and (b) assigning her fewer hours than similarly-situated white Brand Representatives.

27 89. On or about August 18, 2003, Ms. Grubb filed a charge of discrimination
28 with the EEOC. Attached to this Complaint as Exhibit L, and incorporated by reference, is a

1 copy of that charge. On or about December 30, 2003, the EEOC issued Ms. Grubb a notice of
2 right to sue. Attached to this Complaint as Exhibit Y and incorporated by reference is a copy of
3 that notice.

4 **David Culpepper**

5 90. Plaintiff David Culpepper is a minority resident of Berkeley, California and
6 a graduate student at the University of California at Berkeley. He was denied positions as a
7 Brand Representative at the Abercrombie store in the SF Shopping Center in San Francisco,
8 California in June 2003, and at the SF Stonestown Galleria in San Francisco, California in March
9 2003 on account of his race or color.

10 91. Mr. Culpepper applied to work as a Brand Representative at the SF
11 Shopping Center store in late May 2002, September 2002, and early June 2003 by handing a
12 written application to an Abercrombie sales associate or manager each time. On the first visit, the
13 Abercrombie employee stated that she would pass the application to the manager. On the second
14 and third visits, the managers there told him that the store was not hiring and that there were no
15 positions available. Mr. Culpepper also applied to work at the SF Stonestown Galleria store in
16 June 2002, late November or early December 2002, and March 2003 by handing a written
17 application to an Abercrombie sales associate or manager each time. On the first and third visits,
18 the Abercrombie employees there told him that the store was not hiring and that there were no
19 positions available. On the second visit, the Abercrombie employee stated that the store would
20 contact him if they were interested. During none of these six application attempts did any
21 Abercrombie employee inform him of the existence of a group interview or ask about his
22 qualifications. Because Mr. Culpepper visited both locations frequently, he noticed many new
23 white Brand Representatives working at both stores, several of whom informed him that they had
24 been hired in recent weeks (during times immediately before and after each of his application
25 attempts). Mr. Culpepper was not hired nor was he ever contacted by Abercrombie.

26 92. By the time of his first application to work at Abercrombie, in May 2002,
27 Mr. Culpepper had substantial experience as a sales associate for comparable stores including
28 Banana Republic, Aeropostale, and Instant (a boutique clothing store in New York City). He was

1 then a recent graduate of the University of California at Berkeley.

2 93. In June 2002, within a few weeks of Mr. Culpepper's first application to
3 the SF Shopping Center, four white male friends of his with no retail experience applied to that
4 store and were all hired on the spot and scheduled for their first shifts.

5 94. Abercrombie has discriminated against Mr. Culpepper on the basis of his
6 race, color, and/or national origin by denying him employment because he is not white.

7 95. On or about August 18, 2003, Mr. Culpepper filed a charge of
8 discrimination with the EEOC. Attached to this Complaint as Exhibit M, and incorporated by
9 reference, is a copy of that charge. On or about December 30, 2003, the EEOC issued Mr.
10 Culpepper a notice of right to sue. Attached to this Complaint as Exhibit Z and incorporated by
11 reference is a copy of that notice.

12 **Patrice Douglass**

13 96. Plaintiff Patrice Douglass, an African American female, is a student at the
14 University of California, Santa Cruz. She applied for a position as a Brand Representative at the
15 Abercrombie store in the Bay Street shopping area in Emeryville, California in or about May
16 2003. She submitted a written application to a manager on duty and informed him of her
17 qualifications, including her prior retail experience. She was qualified for the job, in part based
18 on that retail experience. Abercrombie refused to hire Ms. Douglass despite knowing of her
19 qualifications, based on her race, color, and/or national origin.

20 97. The manager informed Ms. Douglass that May was "early" to apply for
21 summer employment. He also questioned Ms. Douglass why she had included two phone
22 numbers, when the "usual" applicant only listed one.

23 98. One week later, Ms. Douglass's friend, who is white, requested an
24 application for summer employment as a Brand Representative at the same Abercrombie store.
25 An Abercrombie employee invited the friend to attend one of the group interviews that the store
26 held every Wednesday. The friend did so and was hired.

27 99. Abercrombie has discriminated against Ms. Douglass on the basis of her
28 race, color, and/or national origin by denying her employment because she is not white.

100. On or about December 23, 2003, Ms. Douglass filed a charge of discrimination with the EEOC. Ms. Douglass received a copy of her Notice of Right to Sue from the DFEH, dated December 23, 2003. Attached to this Complaint as Exhibit N, and incorporated by reference, are copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Ms. Douglass a notice of right to sue. Attached to this Complaint as Exhibit AA and incorporated by reference is a copy of that notice.

Robair Sherrod

101. Plaintiff Robair Sherrod, an African American male, is a student at California State University at Dominguez Hills. He applied for a position as a Brand Representative at the Abercrombie store in the South Bay Galleria in Redondo Beach, California in or around December 2002. He submitted a written application and participated in two group interviews. He was qualified for the job, in part based on his prior retail experience. Abercrombie refused to hire Mr. Sherrod despite knowing of his qualifications, based on his race, color, and/or national origin.

102. In or around January 2003, shortly after he had submitted his application, Mr. Sherrod was invited to a group interview. The manager who conducted the interview informed Mr. Sherrod that the Company would contact him within a week regarding his application. Approximately one month later, a store employee called Mr. Sherrod to invite him to a second group interview. Again, the manager who conducted the interview informed Mr. Sherrod that he would be called within a week regarding his application. No store employee has since contacted Mr. Sherrod regarding his application.

103. Abercrombie has discriminated against Mr. Sherrod on the basis of his race, color, and/or national origin by denying him employment because he is not white.

104. On or about December 1, 2003, Mr. Sherrod filed a charge of discrimination with the EEOC. Mr. Sherrod received a copy of her Notice of Right to Sue from the DFEH, dated December 30, 2003. Attached to this Complaint as Exhibit O, and incorporated by reference, are copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Mr. Sherrod a notice of right to sue. Attached to this Complaint as Exhibit BB and

1 incorporated by reference is a copy of that notice.

2 **GENERAL POLICIES OR PRACTICES OF DISCRIMINATION**

3 105. The denials and abridgments of employment opportunities suffered by the
 4 Representative Plaintiffs are part of a general policy or practice of discrimination on the basis of
 5 race, color, and/or national origin in employment that has existed at Abercrombie throughout the
 6 relevant time period. These are not isolated examples of employment practices or individual
 7 decisions. On the contrary, these incidents are representative of A&F's systematic discrimination
 8 against minorities and in favor of white applicants and employees, to create an overwhelmingly
 9 white Brand Representative workforce.

10 106. On September 13, 2001, the EEOC issued a Letter of Determination with
 11 respect to the EEOC charge filed by Plaintiff Juancarlos Gómez-Montejano, stating,

12 The preponderance of the evidence supports Charging Party's claim
 13 that he was denied a permanent position as a Brand Representative,
 14 denied an assignment and terminated because of his national origin.
 15 Moreover, evidence obtained during the course of the investigation
 16 revealed that *Latinos and Blacks, as a class, were denied*
 17 *permanent positions, denied assignments and treated in an unfair*
 18 *manner with regard to recruitment based on their race and national*
 19 *origin*, and that Respondent failed to maintain employment records
 20 as required by Title VII. Therefore, I have concluded that the
 21 evidence is sufficient to establish a violation of the above-cited
 22 statute.

23 Attached hereto as Exhibit E (emphasis added).

24 107. The EEOC sent this letter to Mr. Gómez-Montejano and to Abercrombie.

25 108. The under-representation of minorities in Brand Representative positions
 26 throughout Abercrombie's approximately 602 stores in the United States results from an
 27 intentional policy and practice of discrimination on the basis of race, color, and/or national origin
 28 in hiring, initial job assignment, weekly hours allocation, internal job transfer, inter-store transfer,
 and termination.

109. Abercrombie has pursued policies or practices on a continuing basis that
 have denied or restricted job opportunities to qualified minority applicants and employees.

110. Such discriminatory policies or practices include, without limitation:

1 a. reliance on subjective, arbitrary, standardless, and unvalidated
2 criteria in making hiring decisions, focusing on whether applicants properly reflect the
3 predominantly white “A&F Look” and image rather than whether they would be responsible,
4 effective Brand Representatives who could perform their jobs well;

5 b. reliance on subjective, arbitrary, standardless, and unvalidated
6 criteria in making decisions in job assignments, weekly hour allocations, and ability to transfer
7 between stores focusing on whether employees properly reflect the predominantly white “A&F
8 Look” and image rather than whether they would be responsible, effective Brand Representatives
9 who perform their jobs well;

10 c. shunting minority applicants and Brand Representatives to stock
11 room and overnight shift positions where they are out of the public eye;

12 d. targeting white candidates for recruitment, both systemically (e.g.,
13 recruiting visits to college campuses and/or targeting of specific sororities and fraternities) and
14 individually (e.g., inviting individual customers in the store to apply to become Brand
15 Representatives), but avoiding, ignoring, discouraging or dissuading equally qualified minorities
16 from applying;

17 e. use of the “Look Book,” the A&F Quarterly, and wall posters as
18 guidelines for management to select Brand Representatives on the basis of their appearance – e.g.,
19 white – as opposed to their qualifications for the job;

20 f. use of corporate “blitzes” to monitor and enforce stores’
21 compliance with the “A&F Look” and to weed out minority Brand Representatives; and

22 g. termination of employees based on race, color, and/or national origin
23 without regard to their performance on the job.

24 **FIRST CLAIM FOR RELIEF**
25 **(42 U.S.C. § 2000e et seq.)**

26 111. Plaintiffs incorporate paragraphs 1 through 110 as alleged above.

27 112. This Claim is brought on behalf of all representative plaintiffs, except Mr.
28 Ocampo, on behalf of themselves and the Class they represent.

113. Abercrombie has maintained a system that is intentionally discriminatory, subjective, standardless, and arbitrary with respect to recruitment, hiring, job assignment, transfer, weekly hour allocation, and termination. The system has an adverse disparate impact on minority applicants and employees. This system is not and cannot be justified by business necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

114. Abercrombie's discriminatory policies or practices described above have denied minority applicants and employees employment, job assignments, job transfers, and weekly hour allocations, resulting in the loss of past and future wages and other job benefits.

115. As noted above, the EEOC has determined that "the evidence is sufficient to establish" that Abercrombie has violated Title VII, because "Latinos and Blacks, as a class, were denied permanent positions, denied assignments and treated in an unfair manner with regard to recruitment based on their race and national origin." Exhibit E.

116. The foregoing conduct constitutes illegal, intentional discrimination as unjustified disparate impact prohibited by 42 U.S.C. § 2000e *et seq.*

117. Plaintiffs request relief as hereinafter provided.

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1981)

118. Plaintiffs incorporate paragraphs 1 through 110 as alleged above.

119. This claim is brought on behalf of all Plaintiffs and the Class they represent.

120. Abercrombie has maintained an intentionally discriminatory system with respect to recruitment, hiring, job assignments, transfers, weekly hour allocations, and termination.

121. The foregoing conduct constitutes illegal intentional discrimination with respect to the making, performance, modification, and termination of contracts prohibited by 42 U.S.C. § 1981.

122. Plaintiffs request relief as hereinafter provided.

THIRD CLAIM FOR RELIEF
(California Fair Employment and Housing Act, Government Code § 12940, et seq.)

123. Plaintiffs incorporate paragraphs 1 through 110 as alleged above.

124. This claim is brought on behalf of Eduardo Gonzalez, Encarnacion Gutierrez, Johan Montoya, Juancarlos Gómez-Montejano, Jennifer Lu, Austin Chu, Ivy Nguyen, Angeline Wu, Eric Fight, Carla Grubb, David Culpepper, Patrice Douglass, and Robair Sherrod and the subclass of California class members they represent.

125. Plaintiffs Eduardo Gonzalez, Johan Montoya, Juancarlos Gómez-Montejano, Jennifer Lu, Austin Chu, and Angeline Wu have received copies of their Right to Sue letters from the DFEH. The pendency of the EEOC investigations into Plaintiffs' charges tolled the time limits for filing civil actions pursuant to the Fair Employment and Housing Act. Plaintiffs have therefore timely complied with all prerequisites to suit.

126. Plaintiffs request relief as hereinafter provided.

ALLEGATIONS REGARDING RELIEF

127. Plaintiffs, and the class they seek to represent, have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs, and the class they seek to represent, are now suffering and will continue to suffer irreparable injury from defendant's discriminatory acts and omissions.

128. Abercrombie's actions have caused and continue to cause plaintiffs and all class members substantial losses in earnings, work experience, weekly hour allocations, and other employment benefits.

129. In addition, representative plaintiffs and the class suffer and continue to suffer humiliation, embarrassment, and anguish, all to their damage in an amount according to proof.

130. Abercrombie performed the acts herein alleged with malice or reckless indifference. Plaintiffs and class members are thus entitled to recover punitive damages in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the class pray for relief as follows:

131. Certification of the case as a class action on behalf of the proposed class;

132. Designation of Representative Plaintiffs Eduardo Gonzalez, Anthony Ocampo, Encarnacion Gutierrez, Johan Montoya, Juancarlos Gómez-Montejano, Jennifer Lu, Austin Chu, Ivy Nguyen, Angeline Wu, Eric Fight, Carla Grubb, David Culpepper, Patrice Douglass, and Robair Sherrod as representatives of the class;

133. Designation of Representative Plaintiffs' counsel of record as class counsel;

134. A declaratory judgment that the practices complained of herein are unlawful and violate 42 U.S.C. § 1981;

135. A preliminary and permanent injunction against Abercrombie and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs, and usages set forth herein;

136. An order that Abercrombie institute and carry out policies, practices, and programs that provide equal employment opportunities for all minorities, and that it eradicate the effects of its past and present unlawful employment practices;

137. An order restoring plaintiffs and class members to their rightful positions at Abercrombie, or in lieu of reinstatements, an order for front pay benefits;

138. Back pay (including interest and benefits) for individual plaintiffs and class members;

139. All damages sustained as a result of Abercrombie's conduct, including damages for emotional distress, humiliation, embarrassment, and anguish, according to proof;

140. Exemplary and punitive damages in an amount commensurate with Abercrombie's ability to pay and to deter future conduct;

141. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;

1 142. Pre-judgment and post-judgment interest, as provided by law; and

2 143. Such other and further legal and equitable relief as this Court deems
3 necessary, just, and proper.

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Dated: January 6, 2004

Respectfully submitted,

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Wu, Eric Fight, Carla Grubb, David
Culpepper, Patrice Douglass, and Robair
Sherrod*

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: January 6, 2004

Respectfully submitted,

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